

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RONALD LEE FOSTER and
MARK SHAWN EDWARD FOSTER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RONALD FOSTER, JR.,

Respondent-Appellant,

and

CHARMAYNE DENISE HICKMAN,

Respondent.

UNPUBLISHED
June 24, 2003

No. 242035
Wayne Circuit Court
Family Division
LC No. 00-389896

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), (k). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I. FACTS

The trial court terminated the parental rights of respondent Ronald Foster Jr. after petitioner, the Family Independence Agency, filed for custody of the two children Ronald and Mark. The boys' grandfather, Foster, admitted to whipping them with an extension cord. Foster also testified that he took care of the children while respondent was incarcerated for seven years and while respondent traveled with his job. The petitioner directed respondent and Foster to work out a plan for reunification with the children. The plan included obtaining proper housing, employment and parenting classes and random drug screens. At first respondent attended some counseling classes and visitations. In January 2001, respondent moved to Alabama for approximately six months however he did return for the review hearing on March 14, 2001 for a

short visit. Caseworker Tenisha Carter testified that respondent had only submitted one of the required drug screens and that test was positive for marijuana. Carter testified that although respondent had obtained a two bedroom apartment, there were no beds for the children or a refrigerator. Respondent was steadily employed as a janitor and had attended some visitations. However, petitioner estimated that it would be at least six months until respondent could properly care for the children.

II. STATUTORY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

A. Standard of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 335; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

B. Analysis

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (k), which provide for termination of parental rights where clear and convincing evidence establishes the following:

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child.

The trial court did not clearly err in finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence clearly demonstrated that respondent-appellant was not committed to providing a stable environment for his special needs children. Furthermore, after the petition for termination was filed, respondent-appellant submitted his first drug screen and tested positive for marijuana. The unstable living conditions and substance abuse that led to the adjudication continued to exist. However, MCL 712A.19b(a)(ii) deals with abandonment for 91 days or more and (k) deals with abuse by abandonment. The record states that respondent came home and visited the children for the review hearing in March of 2001. Hence there was not abandonment for 91 days as required under the statute. While the lower court terminated respondent's rights pursuant to MCL 712A.19b on five separate grounds, we note that the trial court needed clear and convincing evidence of only one statutory ground to support its termination order. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

II. BEST INTERESTS OF THE CHILDREN

A. Standard of Review

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the children's best interests is reviewed for clear error. *Id.*

B. Analysis

The evidence did not show that termination of respondent-appellant's parental rights was not clearly in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent had not made a commitment to providing a stable life for his children. He moved around because of his job and had not obtained housing that was suitable for children. He failed to visit the children regularly. Further, the children had special needs due to their behavioral problems that respondent could not meet because of his unstable lifestyle.

Thus, the trial court did not err in terminating respondent-appellant's parental rights to the children.

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette